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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

James Bradley Bailey,

Plaintiff,

v.

Bank of America Corporation, OneWest Bank,
Wells Fargo Bank, Suntrust Bank, Deutsche
Bank National Trust Company, as Trustee for
Soundview Home Loan Trust 2005-4, GSAA
Home Equity Trust 2006, And All persons
Unknown, Claiming any Legal or Equitable
Right, Title, Estate, Lien, or Interest in the
Property Described in the Complaint Adverse to
Plaintiff's Title, or Any Cloud on Plaintiff Title
Thereto, Korn Law Firm, P.A., Brock and
Scott, PLLC, Rogers Townsend & Thomas, PC.
And Does 1 through 25, inclusive,

Defendants.

CASE NO: **3:14-CV-01849-MGL-PJG**

**FIRST AMENDED NOTICE OF
REMOVAL**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441, 1446, ("Removal Statutes"), F.R.C.P. Rule 60,
S.R.C.P. Rule 60, and applicable case law hereby removes the foreclosure actions listed below
("Actions") from the Common Court of Pleas for Lexington County, South Carolina:

- Case #10-CP-32-O987 regarding the property commonly known as 310 Shadowfield Drive West Columbia, SC. 29169 ("Shadowfield Property"); Exhibit "D".
- Case #11-CP-32-4702 regarding the property commonly known as 383 Golden Jubilee Road, Gilbert, SC. 29054 ("Golden Jubilee Property"); Exhibit "E".
- Case #13-CP-00855 201 Crown Poinc Road, Lexington, SC. 29073 ("Crownpointe Property"). The state court complaint is submitted herewith as Exhibit "A".
- Case #12-CP-32-1396 regarding the property commonly known as 123 Weaver Drive, Lexington, SC. 29073 ("Weaver Property"). The Complaint is submitted herewith as Exhibit "B".
- Case #09-CP-32-0723 regarding the property commonly known as 108 Westpointe Court, Lexington, SC. 29073 ("108 Westpointe Property"); Exhibit "F"; and,
- Case #09-CP-2810 regarding the property commonly known as 120 Westpointe Court, Lexington, SC. 29073 ("120 Westpointe Property"). Exhibit "G".

A chart of each case is submitted herewith as Exhibit "C", for ease of reference

The Actions are removed to the United States District Court for the District of South Carolina, Columbia Division. As grounds for removal, Defendants state as follows:

PRIOR PROCEEDINGS IN STATE COURT

1. Plaintiffs in the Actions filed the above foreclosure actions in the Court of Common Pleas, Lexington County, South Carolina. With the exception of the two state court complaints filed herewith, copies of the Summons' and Complaints will be filed as soon as they are available. The others are not available at this time because the Plaintiff herein was not properly served and Lexington Court requires a person to physically go to the court and

1 copy them. Plaintiff herein has not yet been able to do so as he lives out
2 of state. However, Plaintiffs in the Actions have a copy, in that counsel
3 filed the Actions.

4 2. In the 201 Crown Point Action, Case #13-CP-00855 201, the Plaintiff has
5 not been served.

6 3. As of the time of this Notice of Removal, the time for filing a responsive
7 pleading in the Crown Point Action has not expired and no orders have
8 been issued. Thus, all statutory requirements of the federal Removal
9 Statutes have been met according to the statutes.

10 4. In the other Actions, the time limits for Removal do not apply for the
11 following reasons.

12 A. The state court had no jurisdiction because the Actions were never
13 properly served, thus they were never "commenced" for purposes
14 of the Removal Statutes.

15 B. The state court had no jurisdiction because the Actions are and,
16 were void, and of no force or effect. F.R.C.P. 60 provides
17 judgments and orders obtained through fraud "or any other reason
18 that justifies relief" deprives the court of jurisdiction. South
19 Carolina law is the same; S.C.R.C.P. Rule 60.

20 C. Case law also provides there is no time limit. The U.S. Supreme
21 Court explained:

22 "Although Rule 60(b)(4) is ostensibly subject to the "reasonable"
23 time limit of Rule 60(b), at least one court has held that no time
24

1 limit applies to a motion under the Rule 60(b)(4) because a void
2 judgment can never acquire validity through laches. See Crosby v.
3 Bradstreet Co., 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911,
4 83 S.Ct. 1300, 10 L.Ed.2d 412 (1963) where the court vacated a
5 judgment as void 30 years after entry. See also Marquette Corp. v.
6 Priester, 234 F.Supp. 799 (E.D.S.C.1964) where the court
7 expressly held that clause Rule 60(b)(4) carries no real time limit”
8 See, Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d
9 278 (1940).

11 South Carolina law of course follows Federal Constitutional law:
12 “A judgment is a void judgment if the court that rendered
13 judgment lacked jurisdiction of the subject matter, or of the parties,
14 or acted in a manner inconsistent with due process, Fed. Rules Civ.
15 Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const Amend. 5.
16 Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).

18 A void judgment is one that, from its inception, is a complete
19 nullity and is without legal effect." Thomas & Howard Co. v. T.W.
20 Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).
21 The definition of void under the rule only encompasses judgments
22 from courts which failed to provide proper due process, or
23 judgments from courts which lacked subject matter jurisdiction or
24 personal jurisdiction." McDaniel v. U.S. Fid. & Guar. Co., 324
25 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is
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1 fundamental that no judgment or order affecting the rights of a
2 party to the cause shall be made or rendered without notice to the
3 party whose rights are to be affected." (Tyron Fed. Sav. & Loan
4 Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992).
5 Generally, a person against whom a judgment or order is taken
6 without notice may rightly ignore it and may assume that no court
7 will enforce it against his person or property. The requirements of
8 due process not only include notice, but also include an
9 opportunity to be heard in a meaningful way, and judicial review.
10 Grannis v. Ordean, 234 U.S. 385, 394 (1914) ('The fundamental
11 requisite of due process of law is the opportunity to be heard.')

12 S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d
13 846, 849 (1995).

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10 S.C. Dep't of Soc. Servs. v. Holden, supra. 319 S.C. 72, 78, 459
11 S.E.2d 846, 849 (1995).
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14 D. In addition and/or in the alternative the time limits in the Removal
15 Statutes were equitably tolled due to the misconduct and fraud of
16 the plaintiffs in the Actions.
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18 DATED: July 16, 2014
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21 By: 

22 James Bradley Bailey
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